IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE SIXTEENTH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE Dr. JUSTICE G.YETHIRAJULU

WRIT PETITION NO : 16590 of 2004

Between:

Ch. Vara Prasad, S/o. Prabhakar Rao, Hindu,
Sathavahana College, Sitharmapuram, Vijayawada.

..... PETITIONER

AND

1 Government of Andhra Pradesh, Represented by its Secretary,
College Education, Secretariat Bldgs. Hyderabad.
2 The Commissioner of College Education, Government of Andhra Pradesh, . .
Hyderabad.
3 The Regional Joint Director of College Education & Competent Authority, . .
Rajamundry.
4 The Principal, SRR & CVR Government Degree College Vijayawada.
5 Sathavahana College, Represented by its Correspondent,
Vijayawada - 520 002.
6 The Principal, Sathavahana College, Vijayawada - 520 002

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ, order or direction, particularly one in the nature of a Writ of Mandamus, declaring the action of the respondent Nos. 5 and 6 as illegal and ultra vires to the provisions of Article 14 of the Constitution of India and also the mandatory provisions of the A.P. Education Act and the Rules framed there under on the subject from time to time, besides directing to implement the directions given by the respondent No. 3 through his Proceedings bearing Rc.No. 851/B1/2004 dated 10-8-2004 with all financial and consequential benefits as applicable to the facts of the case in the light of the respective provisions of the Statute.

Counsel for the Petitioner:MR.V.S.R.ANJANEYALU

Counsel for the Respondent Nos.1 to 4: GP FOR EDUCATION
Counsel for the Respondent Nos. 5 and 6: Mr.G.VENKAT RAO

The Court made the following :

ORDER:

The petitioner is working as a lecturer in commerce in the 5th respondent college. He was kept under suspension from 15-5-2004, at the time of initiating Departmental Enquiry against him. The suspension continued till 16-7-2004. On 16-7-2004 the petitioner submitted joining report before the 5th respondent and the 5th respondent did not act upon it. Therefore, he submitted a representation to the 3rd respondent on 4-8-2004 to issue necessary instructions to respondents No. 5 and 6 to permit him to join. However, the 3rd respondent, who is the Competent Authority, through proceedings, dated 10-8-2004, directed the 5th respondent to permit the petitioner to join duty with immediate effect, pending final orders in the disciplinary proceedings.

The grievance of the petitioner is that though the order passed by the 3rd respondent was communicated to respondents No. 5 and 6, they did not implement the said order. Therefore, he approached this Court through this Writ Petition to direct the respondents No. 5 and 6 to implement the orders of the 3rd respondent, dated 10-8-2004 with all financial and consequential benefits.

The learned counsel for the petitioner drew the attention of this Court to Section 79 of the A.P. Education Act. Section 79 reads as follows:-

> *"Dismissal, removal or reduction in rank or suspension, etc., of employees of private institutions:- 1) No teacher or member of the non-teaching staff employed in any private institution (herein after in this Chapter referred to as 'the employee')shall be dismissed, removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.*
>
> *3(b) No such suspension shall remain in force for more than a period of two months from the date of suspension and if such inquiry is not started and completed within that period, such employee shall, without prejudice to the inquiry, be deemed*

to have been restored as employee".

Since the Section is clear that unless the Competent Authority extend the period of suspension, the period of suspension will be over after completion of two months and the delinquent employee is entitled to resume duty and he will be deemed to be continuing in service after the expiry of the period of two months.

The learned counsel for the respondents No. 5 and 6 represents that before expiry of the suspension period of two months, 5th respondent addressed a letter to the 3rd respondent, requesting to extend the period of suspension. But, the 3rd respondent without taking note of the application made by the 5th respondent passed the impugned order on 10-8-2004 directing the 5th respondent to permit the petitioner to resume duty. He, therefore, submits that since the Enquiry Officer submitted his report, no direction shall be given to the 5th respondent to permit the petitioner to resume duty. The 5th respondent so far did not pass any final order and if the 5th respondent passes any order in pursuance of the Enquiry Report, it has every liberty to take a decision regarding the punishment that is likely to be imposed on the petitioner on the basis of the material placed along with the Enquiry Report. But, the submission of the Report by the Enquiry Officer is not a bar to implement the order of the 3rd respondent.

The Writ Petition is accordingly allowed, directing the respondents No. 5 and 6 to permit the petitioner to resume duty and the petitioner shall be deemed to be continuing in service with effect from the date of expiry of the two months period of suspension immediately. No order as to costs.

Dr. G.Yethirajulu, J.

16th September, 2004.

KM

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Thursday of

Sixteenth day of September,Two thousand and four.

Sd/-

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Secretary,Government of Andhra Pradesh,
College Education, Secretariat Bldgs. Hyderabad.
2 The Commissioner of College Education, Government of Andhra Pradesh, . .
Hyderabad.
3 The Regional Joint Director of College Education & Competent Authority, . .
Rajamundry.
4 The Principal, SRR & CVR Government Degree College Vijayawada.
5 The Correspondent,
Sathavahana College, Vijayawada - 520 002.
6 The Principal, Sathavahana College, Vijayawada - 520 002

7. 2CCs to G.P. for Education, High Court Buildings, Hyderabad (OUT)

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THE HON'BLE Dr. JUSTICE G.YETHIRAJULU

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16th September, 2004.